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IN THE

Supreme Court of the United States

No. 70-244

ROGER BOSHES, ESTHER K. ROERIG, CURTIS COLLUM, FRANK JACKSON and JAMES TAYLOR,

Petitioners,

v.

GENERAL MOTORS CORPORATION and the HONORABLE WILLIAM J. CAMPBELL, Judge of the United States District Court for the Northern District of Illinois,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF CONSUMERS UNION OF U.S. INC., FEDERATION OF HOMEMAKERS, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, AMERICAN CIVIL LIBERTIES UNION AND RALPH NADER AS AMICI CURIAE

INTEREST OF AMICI CURIAE

Consumers Union of U.S. Inc. is a nonprofit membership organization with nearly 2,000,000 members whose purpose is to provide information and counsel to consumers about the management of family expenditures including information relating to legislative, judicial and regulatory actions of

government affecting consumer welfare. Consumers Union accepts no support from any commercial organization. Federation of Homemakers is a nationwide membership organization of consumers, with some 6,000 active members, particularly interested in food and drug matters, which participates in administrative, judicial and legislative proceedings on behalf of consumers. The American Civil Liberties Union is a non partisan and nonprofit corporation whose purpose is defending and advancing civil liberties through litigation and public education. The National Legal Aid and Defender Association is a membership organization to which nearly all the public defender, legal aid and legal services projects throughout this country belong. NLADA is devoted to providing effective legal assistance, civil and criminal, to poor persons. Ralph Nader in his individual capacity, and through associated nonprofit organizations which he has founded, has for many years been devoted to the goal of making private corporations and the instruments of government more responsive to the needs of consumers and the public generally.

STATEMENT

On August 6, 1968, a class action against respondent General Motors Corporation (General Motors) was brought by five purchasers of General Motors passenger automobiles for relief for alleged violations of Section 1 and 2 of the Sherman Act and Section 7 of the Clayton Act.

There were a number of orders, pursuant to stipulation, extending time to file a responsive pleading. On March 23, 1970 General Motors filed a motion to dismiss the complaint (Rec. 126-127). On September 28, 1970, after the issues on General Motors' motion were under advisement, petitioners moved the District Court for relief from restrictions against communication with members of the class, purportedly imposed by its Rule 22.[1] This motion

[1] Rule 22 as then in effect provided:

> Rule 22. For Prevention of Potential Abuse of Class Action. In every action brought as a class action under Rule

was in the alternative: First, to treat District Court Rule 22 as applied to this case as in effect an injunction, and to modify and dissolve such injunction, so as to establish the right of plaintiffs and/or their counsel to communicate with the several states of the United States, through their Attorneys General, as potential members of the class, without prior censorship and without subsequent disclosure to the court and/or counsel, except for good cause shown; Second and Third, to declare Rule 22 void and expunge the Rule as in violation of the First Amendment and beyond the rule-making power of the District Court. A second and simultaneous motion was for a determination pursuant to Rule 23 of the Rules of Civil Procedure that the action is maintainable as a class action and to provide for appropriate notice to the class.

Both motions were denied by order dated October 6, 1970 (App. 7a-8a). Petitioners' attempts to challenge the District Court's rulings by appeal (App. 8a) and alternatively by mandamus and prohibition (App. 12a, 40a, 52a) resulted respectively in dismissal of the appeal on motion of General Motors (37a); rejection of the alternative petitions (App. 49a, 61a); and denial of petitions for rehearing (App. 39a, 51a and 63a).[2] The petition for a writ of certiorari was filed on June 7, 1971. Meanwhile, proceedings have continued in the District Court. General Motors' motion to dismiss the complaint was granted in part and

23 of the Federal Rules of Civil Procedure, no communication concerning such action shall be made in any way by any of the parties thereto, or by their counsel, with any potential or actual class member, who is not a formal party to the action, until such time as an Order may be entered by the Court approving the communication.

Attorneys will be required to comply with the provisions of Rule 39 of the General Rules of the Court.

[2]General Motors' motion to dismiss the appeal relied primarily on the possibility that the District Court at a later stage might reconsider its denial of petitioners' motions, as suggested by statements of that court both at the time of and subsequent to, the orders under appeal (App. 16, 12a, 13a).

denied in part (App. 16a). Since the filing of the petition for certiorari, the District Court has denied a General Motors' motion to dismiss the amended complaint.

Local Rule 22 has been amended since the filing of the petition.[3] The genesis and scope of that change is as follows:

(a) Rule 22 in its original form had been adopted April 15, 1970, and was apparently suggested by preliminary drafts of the recommendations later incorporated into the Manual for Complex and Multi-District Litigation (hereinafter referred to as the Manual).[4]

(b) On May 14, 1971 the President of the Chicago Bar Association transmitted to the Chief Judge of the District Court a committee report expressing the opinion that in its then form Rule 22 was unconstitutional "as an overly broad restraint on the First Amendment right to freedom of speech." The report also concludes that Rule 22 "cannot be corrected by employment of omitted language contained in Suggested Local Rule 7 [contained in the Manual], or by modification of existing Rule 22. The same problems of overbreadth and prior restraint would continue to exist."

(c) For reasons set forth in a letter of its Chief Judge dated June 24, 1971, the Judges of the District Court rejected the Committee's suggestions, but amended its Rule 22 to conform to the recommendations in the Manual.[5]

The amended rule specifies certain communications which are forbidden, but does not lift the blanket restraints upon

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[3]The full text of the amended Rule 22 is appended hereto.

[4]The Manual which is conveniently available as a supplement to Moore's Federal Practice represents procedures "recommended" by a Board of Editors most of whom are Federal judges, designated by the "Panel" appointed by the Chief Justice pursuant to section 1407 of Title 28 of the United States Code.

[5]We are advised that unless previously set forth in General Motors' response to the petition, petitioners will submit the full text of those letters in a reply memorandum.

all other communications including those challenged by the petition for certiorari.[6]

QUESTION CONSIDERED IN THIS MEMORANDUM

The Amici Curiae consider the basic issue to be:

Whether it is consistent with the First Amendment or the Federal Rules of Civil Procedure related to class actions to impose, without specific showing of need, a pervasive bar to any communication and consultation between the original class action plaintiffs and all other persons having a potential interest in the litigation, except communications subject to advance disclosure to their adversary and advance court censorship with attendant delays and impediments to prompt and free discussion.[7]

[6]The amendment excludes from the prohibition "communications occurring in the regular course of business or in the performance of the duties of a public officer or agency (such as the Attorney General) which do not have the effect of soliciting representation by counsel, or misrepresenting the status, purposes or effect of the action and orders therein." This appears to us to permit a public agency a qualified freedom of communication, but not to permit any communications to the office or agency at the initiation of a private class action plaintiff.

By letter dated June 28, 1971, General Motors requested an extension of time to respond to the petition for certiorari in order to determine "whether the amendment of the rule bears on the disposition of the petition:" We are not yet aware of its position as to the effect of the amendment. Unless the parties to the litigation should stipulate that under the amended rule the petitioners are no longer restrained from communicating, consulting or advising with the state Attorneys General to the full extent requested in their motion to the District Court and the District Court should approve such a stipulation, the amendment of the Rule cannot operate to moot this case.

[7]Whether the District Court should have determined the propriety of proceeding by way of class action and provided for notice to the class as contemplated by Rule 23 of the Rules of Civil Procedure is subsidiary to the basic issue. Delay in resolution of this subsidiary matter aggravates the burden of restraints upon petitioner's communication with potential allies. We also regard the procedural questions

DISCUSSION

1. It is now settled that the First Amendment bars sweeping restraints upon communication incident to the exercise of legal rights, even though the restraints may have some relationship to the supposed evil of solicitation of legal business. See *United Transportation Union v. State Bar of Michigan*, ___ U.S. ___, 91 S.Ct. 1076 at 1082. After discussing *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1; *United Mineworkers v. Illinois State Bar Association*, 389 U.S. 217, and *NAACP v. Button*, 371 U.S. 415, the opinion states:

> "The common thread running through these decisions is that collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment." 91 S.Ct. 1076 at 1082.

Like *United Transportation Union* and the cases cited therein, the instant case involves interference, without any specific showing of need therefore, with meaningful access to the courts. Thus Rule 22 of the District Court as applied in this case bars the taking of realistic, effective and timely action whereby scattered plaintiffs with individually small, but in the aggregate large, economic interests may combine or even communicate among themselves as participants in class suits against large and powerful adversaries. Thus, they may not consult or seek to gather evidence from others having a similar interest. They may not bolster their status as adequate representatives of the class by inducing others to join them, or otherwise to evidence acquiescence in such representation.[8] They may not seek financial

as to the appealability of the District Court's orders and alternatively as to the appropriateness of mandamus, as subsidiary to the basic substantive question. Cf. *Organization for a Better Austin, et al. v. Keefe*, ___ U.S. ___, 91 S.Ct. 1575, 1577 n. 1.

[8]See *Weeks v. Bareco Oil Co.*, 125 F.2d 84, 94 (C.A. 7, 1941) where it was held that plaintiffs were properly held not sufficiently representative, noting that "they could, and should, have supplied some proof that others in the class desired the suit to go on." Other cases, particularly since the 1966 amendment to Rule 23, have

support from others of the class, even state governmental authorities as potential civil litigants. They may not by cooperation and division of effort with attorneys representing others of the class seek to reduce their own legal expenses.[9]

In addition to its impact upon the initial plaintiffs, the rule impinges unreasonably on the rights of other members of the class, in this instance the several states through their Attorneys General, to receive timely information of the pendency of the action, so that they may take such steps as may be appropriate to protect their interest, including cooperation with the initial class action plaintiffs. The First Amendment protects the right to receive as well as the right to transmit information. See *Lamont v. Postmaster General*, 381 U.S. 301.

2. While we believe that the decisions below involve such violation of petitioners' constitutional rights as would warrant setting aside a legislative proscription of similar scope, reversal of the decisions below requires only a conclusion that the challenged action of the courts below must be set aside so that Rule 23 of the Rules of Civil Procedure may be administered in a manner consistent with First

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allowed class actions to go on with relatively few named plaintiffs, but the initial plaintiffs can not feel sure that they will not be challenged as inadequate representatives. See *Hohman v. Packard Instrument Co.*, 399 F.2d 711 (C.A. 7, 1968), Moore's Federal Practice ¶ 23.07[4].

[9]While not specifically challenged on that ground by the petition, the rule unrealistically imposes restraints which individual consumer plaintiffs might inadvertently violate in their everyday life, by merely talking about the case with friends who might happen to be consumers of a similar product. As applied to a class action for damages for alleged racial discrimination in employment, such a restraint could be violated by the most natural discussions of the case among fellow employees. Cf. a sweeping restraint imposed in such a case by order dated June 18, 1971 in *Joseph P. Moody, et al., Plaintiffs v. Albermarle Paper Company, et al.*, Civil Action No. 989 (Eastern District of North Carolina, Wilson Division).

Amendment rights. It is not necessary to reach the problem, which has troubled some members of this Court, as to the extent of the deference to be accorded to state regulation of the practice of law. See the dissenting opinions in *NAACP v. Button* and *United Transportation Union, supra,* p. 6. No comparable deference for the views of lower federal courts is required in the exercise of this Court's supervisory jurisdiction. The views expressed in the Manual, however distinguished their sponsors, do not purport to be more than "recommendations," and of course may not amend the Rules of Civil Procedure. Moreover, this Court has not hesitated to re-examine and reject in application, even provisions of the Rules of Civil Procedure if found to be unlawful. See *Mississippi Publishing Corp. v. Murphree,* 326 U.S. 438, 443.

3. The courts below did not issue any opinions and the record gives virtually no indication of rationale for the restraint on communication.[10] It is necessary to look for explanation to the Manual (Sections 1.11, 1.61, 1.62) and to Chief Judge Robson's letter of June 24, 1971, which relies on the Manual. That letter concludes (p. 7) that the restraints of Amended Rule 22 are "reasonable regulations . . . to protect the integrity of the judicial process

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[10]General Motors' motion to dismiss the appeal contains, as its only argument on the merits, the following footnote reference (App. 13):

> "The district court no doubt recognized the inefficiency inherent in determining the class action issues or permitting communication with alleged class members regarding an action the court might shortly dismiss for failure to state a claim."

In the context of adversary litigation, it is not unrealistic to assume General Motors was seeking to impede rather than advance the efficiency of plaintiff's efforts. Cf. the warning in *Weeks v. Bareco Oil Co., supra,* 125 F.2d 84, 94, "The chances of tiring the litigant or putting him to such large expense that the right of action would be a remedyless one, may be part of the tactics of a combination of such large companies as are here sued."

from the two potential abuses inherent in class suits: solicitation and misrepresentation."

We may assume with the judges of the District Court that the First Amendment does not bar even prior restraints upon freedom of speech or of the press, where there is an imminent threat to the administration of justice as from newspaper activities calculated to interfere with a fair trial or from picketing in the close vicinity of the court house as in *Sheppard v. Maxwell*, 384 U.S. 333, *Estes v. Texas*, 381 U.S. 532 and *Cox v. Louisiana*, 379 U.S. 559. These cases, cited in the Chief Judge's letter of June 24, 1971, do not appear to support prior censorship of private communications between class action plaintiffs and other members of their class.

We assume, further, that some members of the class may need protection against being misled as to their rights, or from being enticed into improvident fee contracts, as a result of unsupervised general communications.[11] Surely, however, governmental agencies and persons represented by counsel—*a fortiori*, state agencies represented by their Attorneys General—do not need to be shielded by prior judicial censorship from the possibility of being misled or overreached in private discussions with the initial class action plaintiffs or their attorneys.[12]

Nor can it be a proper concern of the class action court to impose prior restraints to guard against the possibility that such private discussions might, as stated in amended Rule 22, "create impressions tending, without cause, to reflect adversely on any party, any counsel, the court, or

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[11] The Chief Judge's letter states at page 4: "Unchecked communications with hundreds or thousands of potential clients or adversaries may, however, lead to potential abuse . . . ."

[12] A requirement that any resulting arrangements for legal fees be subject to subsequent disclosure to and approval by the court scarcely seems necessary for the protection of parties represented by counsel, but is the most that could conceivably be justified for the protection of such parties.

the administration of justice." In this context, even after the fact restraints on public statements raise serious constitutional questions. See *New York Times Co. v. Sullivan*, 376 U.S. 254, 273-4.

4. Another apparent purpose of both former and amended Rule 22 is to curb "solicitation." This supposed evil, however, has not been specifically defined in the context of a class action. For example, is there not a valid distinction between solicitation of an original client, and good faith efforts to serve that client's interest by enlisting necessary support of others?[13]

Undiscriminating application of a ban on solicitation as an ethical abstraction should not be permitted to be used as an instrument of oppression by dominent interests. See *United Transportation Union* and cases relied on therein, *supra*.[14] See also, Schuchman, *Ethics and Legal Ethics*, 37 *George Washington Law Review*, 244, 262-66; Comment in 5 *Harv. Civil Rights-Civil Liberties Law Review*, 334, 348-78; note in 79 *Yale Law Journal*, 1179 (1970), criticizing some formulations and applications of Canons of Legal Ethics as advancing special interests incompatible with the public interest.

"Stirring up" of litigation as a common law crime has only a remote application here.[15] It should be noted that

[13]See *People ex rel. Chicago Bar Association v. Edelson et al.*, 313 Ill. 601, 145 North Eastern 246 at p. 249 (1924), holding that an attorney with a claim for collection "which it is his duty to collect should not be barred from soliciting other claims in order to secure creditors sufficient in number and amount to authorize the filing of a petition in bankruptcy . . . ." Another example was the traditional practice, prior to Chapter X of the Bankruptcy Act, of arranging an equity receivership by finding a suitable creditor as a nominal plaintiff.

[14]These cases involved solicitation of legal employment although not by the attorneys whose employment resulted.

[15]See the discussion of historic evils in *NAACP v. Button*, 371 U.S. p. 439-443, particularly the statement at p. 439 that "malicious intent was the essence of the common law offense of fomenting or stirring up litigation."

Rule 22 becomes operative only after a class action has already been started—and applies in a context where Rule 23 of the Rules of Civil Procedure contemplates such notice to members of the class as will give them an opportunity to assert claims that might otherwise lie dormant. Moreover, even if communications with state Attorneys General should stimulate their zeal and assist in the discharge of their public responsibilities to protect the interests of their states and subdivisions as consumers, that can scarcely be regarded as an evil.[16]

5. Whatever the justification for some prior restraints upon communications in connection with class actions, the District Court Rule 22 is a clear embodiment of the abuse of "overbreadth" which has been held to vitiate legislation impairing First Amendment rights, even when a more precisely aimed prohibition could be justified. See *NAACP v. Button, supra,* 371 U.S. at p. 432. See also, *Carroll v. President and Commissioners of Princess Anne,* 393 U.S. 175, 183-184; *Hiett v. United States,* 415 F.2d 664, 671-73 (C.A. 5, 1969), cert. denied 397 U.S. 936. See Note in 83 *Harv. L.R.* 844 (1970).

The recent amendment to Rule 22 does not cure the defect of overbreadth. As noted, *supra,* p. 4, private class action plaintiffs continue to be restrained from initiating communications with public agencies or their counsel or other persons represented by counsel, notwithstanding the exception for "communications occurring in the regular course of business or in the performance of the duties of a public office or agency (such as the Attorney General) which do not have the effect of soliciting representations by counsel, or misrepresenting the status, purposes or effect of the action or orders therein."

[16] In addition, proper respect for the division of powers as well as for working federalism should induce the courts to refrain from permitting private litigation to turn on communications designed to motivate executive as well as legislative action, even where there are charges of conspiracy and unfair tactics, not present in the instant case. See *Eastern Rail Presidents' Conference v. Noerr Motor Freight Inc.,* 365 U.S. 127.

In addition, the qualifying language introduces new problems of vagueness.[17] If the class action plaintiff undertakes to communicate in reliance on the exception, are his communications subject to discovery and challenge to resolve questions collateral to the other issues in the case, at the instance of the class action defendant? For example: whether a particular communication is in the ordinary course of business of the agency, or arguably ultra vires; whether it arguably has the effect of "soliciting representations by counsel or misrepresenting the status, purpose or effect of the action?"[18]

The overbreadth of the prohibition in Rule 22 is not relieved by the fact that the rule permits the class action plaintiffs to apply to the court for specific permission for some limited communications. A general ban pending a showing that a particular communication is appropriate is the essence of constitutionally impermissible censorship. See *Near v. Minnesota,* 283 U.S. 697; *Kingsley Books v. Brown,* 354 U.S. 436, 445. It involves shifting the burden of persuasion to those seeking to exercise First Amendment rights, as well as danger of indefinite delays. Once a district court judge accepts the premise, implicit in District Court Rule 22, that freedom of communication among members of the class is suspect, it becomes inevitable that any plaintiff requesting an exception must bear a heavy

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[17]As said in *NAACP v. Button,* 371 U.S. 415, 438, "Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms."

[18]District courts, following, or perhaps going beyond, the recommendations of the Manual, have restrained a state Attorney General from initiating communications with officers of a local governmental organization of the same state. See the *Cast Iron Pipe* antitrust case No. CA 71-516 (N.D. Ala.), order dated June 16, 1971, ¶ 6 (unreported). Where permitted to communicate, an Attorney General has been barred from doing so through associated private counsel, and otherwise restricted as to dealing with public agencies and municipalities within the state. See, In re Gypsum cases No. 46414 A AJZ (N.D. Cal.); Pretrial Order No. 29, dated June 25, 1971, ¶ 20 (unreported).

burden of proving that no conceivable harm can result, and inevitable also that the pressure of other demands upon the time of a busy judge may lead to delays having the practical effect of denial of meritorious requests. This is illustrated in this case by General Motors' contention that the District Court never decided whether any legally recognizable harm would result from the class plaintiffs' communicating with state Attorneys General, but merely did not wish to resolve that problem until a later stage in the proceeding. See, *supra*, p. 8, n. 10.

6. The importance of the issue presented in the instant case is underscored by the fact that Rule 22 as amended precisely follows the form which the Manual recommends for adoption by the district courts, either by way of general rule or by orders in particular cases. While we are not aware of other similar local rules, those recommendations have already led to a number of other district courts imposing restraints by orders similar in scope to Rule 22. The practice may become widespread among the district courts, unless this Court should make clear that compliance with this recommendation in the Manual violates First Amendment rights.

7. The Recommendation in the Manual extends to all class actions. The resulting burden upon initial class plaintiffs will vary with the nature of the litigation—depending on its inherent difficulties and the extent to which the necessary communications may have been anticipated and completed prior to instituting the class action. While the interest of *amici curiae* extends to class actions generally, we discuss the problem primarily in the context of antitrust cases, both because the instant case is an antitrust case, and because the bulk of the experience with the new concept that class action courts should exercise a broad censorship over communications with the class has been in antitrust cases.[19]

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[19]The *Albemarle Paper Company* case, *supra*, illustrates application to an employment discrimination case, where the ban upon initial plaintiffs communicating with fellow employees had the apparent

This Court has emphasized the high public purpose of private treble damage actions under the antitrust laws. As in *Fortner Enterprises, Inc. v. United States Steel Corp.*, 394 U.S. 495, 502 (1969):

> "As the special provision awarding treble damages to successful plaintiffs illustrates, Congress has encouraged private antitrust litigation not merely to compensate those who have been directly injured but also to vindicate the important public interest in free competition. See *Perma Life Mufflers v. International Parts Corp.*, 392 U.S. 134.

Violations of the antitrust laws by powerful combinations typically injure scattered consumers or small businessmen, and it is only by class actions that those affected can support the enormous expenditures of lawyers' time and energy necessary to prevail in these cases. See Loevinger, *"The Private Antitrust Action,"* 3 *Antitrust Bulletin* 167, 169-72. Cost of litigation may far exceed the amount of any one claimant's damages. See *Eisen v. Carlisle and Jacquelin*, 391 F.2d 555 (C.A. 2, 1968). To the extent that the ban imposed under District Court Rule 22 prevents effective use of the class action device, the consequence may be no relief at all for the typical consumer injured by an antitrust violation. Since a consumer class frequently includes state and local governmental authorities, enlisting the support of these authorities may be the only alternative to such total failure.

8. The further question of whether appeal or mandamus is the proper avenue of review does not go to the heart of the issues. If appeal is unavailable the alternative remedies are for that reason essential to avoid a serious impairment of plaintiffs' constitutional and procedural rights. Postponement of review until the conclusion of the litigation would leave no adequate opportunity to correct the error of the District Court, since there would be no way to eval-

effect of impeding the collection of evidence, without specific court order for each communication, although trial was scheduled to begin July 26, 1971 and the order was dated June 18, 1971.

uate and compensate for the resulting imponderable but substantial handicap to the effective prosecution of the class action.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

ORDER AMENDING RULE 22

IT IS HEREBY ORDERED that Rule 22 of the Civil Rules of this Court be, and the same is hereby amended to read as follows:

RULE 22. For Prevention of Potential Abuse of Class Actions.

In every potential and actual class action under Rule 23, F.R.Civ.P., all parties thereto and their counsel are hereby forbidden, directly or indirectly, orally or in writing, to communicate concerning such action with any potential or actual class member not a formal party to the action without the consent of and approval of the communication by order of the Court. Any such proposed communication shall be presented to the Court in writing with a designation of or description of all addressees and with a motion and proposed order for prior approval by the Court of the proposed communication and proposed addressees. The communications forbidden by this rule, include, but are not limited to, (a) solicitation directly or indirectly of legal representation of potential and actual class members who are not formal parties to the class action; (b) solicitation of fees and expenses and agreements to pay fees and expenses, from potential and actual class members who are not formal parties to the class action; (c) solicitation by formal parties to the class action of requests by class members to opt out in class actions under subparagraph (b)(3) of Rule 23, F.R.Civ.P.; and (d) communications from counsel or a party which may tend to misrepresent the status, purposes and effects of the action, and of actual or potential Court orders therein, which may create impressions tending, without cause, to reflect adversely on any party, any counsel, the Court, or the administration of justice. The obligations and prohibitions of this rule are not exclusive. All other ethical, legal and equitable obligations are unaffected by this rule.

This rule does not forbid (1) communications between an attorney and his client or a prospective client, who has on the initiative of the client or prospective client consulted with, employed or proposed to employ the attorney, or (2) communications occurring in the regular course of business or in the performance of the duties of a public office or agency (such as the Attorney General) which do not have the effect of soliciting representation by counsel; or misrepresenting the status, purposes or effect of the action and orders therein.

ENTER:

FOR THE COURT

/s/ Edwin J. Robson
Chief Judge

June 15, 1971